

EXHIBIT 40

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3
4 IN RE PORK ANTITRUST | Civil No.
5 LITIGATION | 18-1776 (JRT/HB)

6 ----- |

7 This document Relates to: |

8 All Actions |

9
10 The videotaped deposition of ROBERT RUTH,
11 called by the Plaintiffs for examination, reported
12 stenographically by Cynthia J. Conforti, License
13 No. 084-003064, at Kirkland & Ellis LLP, 300 North
14 LaSalle Street, Chicago, Illinois, commencing at
15 the hour of 8:03 a.m. CDT on the 13th day of May,
16 2022.

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1
2 the loop, call me in if he needed me, always tell
3 me what he was planning on negotiating, okay, and
4 get my approval before he'd go out and speak to
5 the producers.

6 BY MS. STUPAR:

7 Q So based on your understanding of
8 negotiations that Dan had through his reports back
9 to you and your own experience negotiating
10 producer contracts in Coldwater, how would you
11 characterize the negotiations between Clemens and
12 its producers?

13 MR. WHEELER: Object to the form and
14 beyond the scope.

15 THE WITNESS: Well, I think there's a
16 misconception that the processor has all the power
17 in the negotiations. When -- they don't realize
18 that the producers have quite a bit of power in
19 the negotiations. You know, the further -- the
20 further west you go, the more power that they have
21 in the negotiations because there's multiple
22 plants, you know, that they have to negotiate
23 with.

24 So, you know, processing plants don't run
25 without pigs going through them, and so for a
processor to lose a big contract with an

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1
2 independent producer, that hurts, and it's very
3 difficult for them to fill, you know, that hole,
4 you know, with different pigs. They've got to go
5 through that whole process again of negotiations
6 and so on and so forth.

7 So I think, people, you know, overplay.
8 You know, I mean, obviously, the producer needs
9 the processor as well, but there's -- there's
10 equal power in those negotiations because they're
11 both dependent on each other.

12 BY MS. STUPAR:

13 Q Based on your experience, who decides in
14 the contract how many hogs will be produced?

15 MR. WHEELER: Object to the form.

16 THE WITNESS: Again, that's negotiated,
17 you know, in the contract. Producer usually just
18 comes and says, hey, I've got 120,000 hogs a year
19 or whatever the number is, that I've got
20 available, you know, to market to you. You know,
21 are you -- are you interested. And if you are,
22 what price are you willing to give me for those
23 pigs?

24 Sometimes the processor comes back and
25 says, hey, I really need 150. Can you give
me -- you know, I mean to say there's that type of

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negotiation too.

Because another misnomer is that producers are tied to one packer. Again, the further west you get, the more you've got producers selling to multiple packers as well, okay, which kind of keeps the field more level for them in their negotiations because packers know that they've got other places to go with their animals.

BY MS. STUPAR:

Q So let's say that I'm a hog producer. I have a contract with Clemens to sell 5,000 hogs a week. If I increase my production beyond that, would Clemens buy the excess product?

MR. WHEELER: Object to the form.

THE WITNESS: So more than -- more than likely, yes. Some of that depends. I mean, if they said, okay, tomorrow I got 5,000 more animals that I'll start sending you tomorrow, probably couldn't do that right away. We would say no, we need a plan to work them in, you know, to our harvest schedule, okay? So there is some timing there -- not to get too technical, but there is some timing it takes. But, typically, somebody comes and says I've got that, we could say, okay, October the 1st, start bringing them.

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1
2 BY MS. STUPAR:

3 Q Well, if you actually could get technical.

4 If I came to you and said, hey, I've got
5 5,000 extra hogs coming to you tomorrow, why
6 couldn't Clemens just say "okay, great"?

7 A So, again, capacities of the plant and
8 where we're at and those sort of things, if we're
9 at full capacity, we'd need to figure out how we
10 could squeeze a few more pigs in, you know, either
11 maybe longer hours, a Saturday harvest every now
12 and then, and those sorts of things before we
13 could, you know, take them. If we have the
14 capacity, we take them right away, okay?

15 Q Can -- and can you explain what you mean
16 by "capacity"?

17 A Yeah, it's the rated capacity of the
18 plant. I mean, we talked a couple of times about
19 10,000 a day, okay?

20 So our Hatfield facility has a rating for
21 the number of animals that -- that it harvests.
22 I'm not -- and we keep improving that all the
23 time.

24 I'm not exactly sure where it's at today.
25 I think it might be around 11,000 a day that we
can harvest. So once you get to that, you know,